



December 6, 2000

Ms. Michelle Simpkins
Winstead, Sechrest & Minick
100 Congress Avenue, Suite 800
Austin, Texas 78701

OR2000-3658A

Dear Ms. Simpkins:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 141881.

This decision is a supplement to Open Records Letter No. 2000-3658 (2000), in which this office ruled on certain information held by the Brushy Creek Municipal Utility District (the "district"), which you represent. The district originally received a request for all documents and correspondence relating to capital recovery fees due to the district from the city of Austin. The district made a timely submission to this office of a request for a ruling, which included the documents at issue in the instant case. Due to an error on our part, we concluded that those documents were extraneous and not at issue. You have resubmitted the identical documents for our review, and we now consider your claimed exceptions against disclosure of this information. You argue that the correspondence between the district's legal counsel and administrators is excepted from disclosure under sections 552.107 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You contend that the submitted correspondence, in its entirety, is excepted from disclosure under section 552.107. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 at 5 (1990). Section 552.107(1) does not except purely factual information from disclosure. *Id.* Nor does it protect information reflecting communications between a governmental body's attorney and a third party. *Id.*

We agree that a portion of the submitted correspondence consists of privileged attorney-client communications that are protected by section 552.107(1) of the Government Code. For your convenience, we have marked the information that may be withheld from disclosure under section 552.107(1).

You also argue that the submitted information is excepted from disclosure under section 552.111. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. As section 552.111 generally protects only advice, opinion, and recommendations, any protection under section 552.111 will usually be no greater or less than the protection offered under section 552.107. See Open Records Decision No. 574 at 2 (1990). Therefore, upon review of the submitted information, we conclude that the district may not withhold under section 552.111 any of the information not excepted from disclosure under section 552.107.

To summarize, the district may withhold from the requestor the information we have marked under section 552.107(1) of the Government Code. The information not excepted from disclosure under section 552.107(1) is similarly not excepted under section 552.111, and it therefore must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/PMA/seg

Ref: ID# 141881

Encl. Submitted documents

cc: Mr. John C. McLemore
8004 Monona Avenue
Austin, Texas 78717
(w/o enclosures)